

Service Date: March 12, 1993

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER Of MONTANA RECYCLING,)	TRANSPORTATION DIVISION
INC., Missoula, Montana, Application)	
for a Class C Montana Intrastate)	DOCKET NO. T-9925
Certificate of Public Convenience)	
and Necessity.)	ORDER NO.6171

FINAL ORDER

APPEARANCES

FOR THE APPLICANT:

Paul Neal Cooley, Skelton and Cooley, 101 East Main,
Missoula, Montana 59802

FOR THE PROTESTANT:

William S. Dockins, Williams, Jent, and Dockins, 506 East
Babcock, Bozeman, Montana 59715

FOR THE COMMISSION:

Martin Jacobson, Staff Attorney, Public Service Commission,
1701 Prospect Avenue, Helena, Montana 59620-2601

Bonnie Lorang, Assistant Administrator, Transportation
Division, Public Service Commission, 1701 Prospect Avenue,
Helena, Montana 59620-2601

BEFORE:

BOB ANDERSON, Chairman
BOB ROWE, Vice Chairman
NANCY MCCAFFREE, Commissioner

INTRODUCTION

1. On August 18, 1992 Montana Recycling, Inc. (MRI), Missoula, Montana, filed an Application for Intrastate Certificate of Public Convenience and Necessity before the Montana Public Service Commission (PSC). In its Application MRI requested approval of a Class C motor carrier authority, statewide, for recyclable materials.

2. Protests to MRI's Application were received from four motor carriers: Dixon Brothers, Inc.; Evergreen Disposal, Inc.; Jeff Brauer, dba Missoula Valley Recycling; and James and Cynthia Hassler, dba Recycle-It (Recycle-It). Protests were also received from Sanders County and Sanders County Refuse Disposal District. All protests, except that of James and Cynthia Hassler, dba Recycle-It, were withdrawn prior to hearing, most through stipulation to an amended application by MRI.

3. Prior to hearing MRI filed a Motion to Limit Scope of Hearing and Grant Requested Authority Without Hearing. In the Motion (to the extent relevant now) MRI essentially argued that Recycle-It, having limited competing authority (curbside service in Park and Gallatin Counties and from these counties to Missoula and Yellowstone Counties), had no standing to protest the balance

of MRI's statewide Application. MRI requested that the hearing be limited to the extent of Recycle-It's authority and the balance of MRI's Application be granted without hearing.

4. MRI's Motion was denied by Notice of Commission Action dated February 3, 1993. The rationale for the denial did not necessarily include overruling or sustaining all of the merits of either MRI's supporting arguments or Recycle-It's opposing arguments. The PSC, having authority to conduct a hearing absent protests, simply determined that the circumstances surrounding MRI's Application warranted hearing on the PSC's own motion (in addition to whatever scope of hearing Recycle-It's authority permitted). Sections 69-12-321(1) and 69-12-322(1), MCA, allow for hearing on the PSC's own motion.

5. Hearing on MRI's application was held on February 5, 1993, at the Bollinger Room, PSC offices. MRI and Recycle-It were present and represented by legal counsel.

6. At the close of MRI's case, insofar as it included witnesses who could properly testify as to the requisite element of "need" for the applied-for services, the PSC, on its own motion, dismissed the balance of MRI's Application. The dismissal was made on the basis that statewide "need" had not been

established and, with the sole remaining witness for MRI being an officer of MRI, could not be established (the details of dismissal to be expressed in this written Final Order).

7. Prior to dismissal MRI had, through the Operations Director of Flathead Industries, Inc. (a shipper witness), Kalispell, Montana, testified that a need existed for MRI's transportation services for recyclable materials between Flathead Industries' facilities in Kalispell, Whitefish, and Columbia Falls and from these facilities to Missoula. At the time of dismissal by the PSC a discussion between the PSC and counsel for the parties, indicated that this Final Order would consider and properly dispose of any need expressed by Flathead Industries.

FINDINGS OF FACT

8. All of the above introductory information which properly can be deemed Findings of Fact and should be so deemed to preserve the integrity of this Order are incorporated herein as Findings of Fact.

9. In comparison to the authority applied for by MRI (statewide) the evidence submitted at hearing discloses that there is only a limited public need for the service proposed. MRI has established need for MRI's proposed transportation

services for the account of Flathead Industries between Flathead Industries' facilities at Kalispell, Whitefish, and Columbia Falls, Montana, and from those facilities to Missoula, Montana.

10. MRI has failed to establish, through required shipper testimony, any other need, limited or otherwise, including need for any overall statewide authority. Outside of Flathead Industries, MRI provided no other shipper witness who established a need for MRI's services.

11. In regard to Flathead Industries' service area, the record discloses a stipulation between the former protestant Evergreen Disposal, Inc. (Evergreen), and MRI limiting MRI's application to the collecting recyclables at only six locations within a ten mile radius of the city limits of Kalispell, Montana. One of these designated locations being Flathead Industries, the stipulation has no material effect on MRI's proposed services to Flathead Industries, or the authority granted in this Final Order.

12. Also in regard to Flathead Industries' service area, the record discloses a stipulation between the former protestant Dixon Brothers, Inc. (Dixon Brothers), and MRI limiting MRI's application such that MRI could not transport commodities in bulk

in tank vehicles. This stipulated agreement shall be included in any authority granted in this Final Order.

13. Besides Evergreen and Dixon Brothers, no other motor carrier or existing transportation service within the area affected by MRI's proposed services to Flathead Industries protested the application. No information contained in MRI's Application, the administrative record, or the evidentiary record demonstrates any cause or reason to believe that any existing transportation services can or will meet the need expressed by Flathead Industries or that there will be harm to existing transportation services contrary to the public interest in any grant of authority to MRI to serve Flathead Industries.

14. MRI's application, on its face, the administrative record, and the evidentiary record disclose that MRI is fit to conduct the proposed services to Flathead Industries.

CONCLUSIONS OF LAW

15. All Findings of Fact which can properly be deemed Conclusions of Law and should be so deemed to preserve the integrity of this Order are incorporated herein as Conclusions of Law.

16. The PSC has jurisdiction over this matter. See, Title 69, Chapter 12, MCA, particularly Sections 69-12-321 through 69-12-323, MCA.

17. The procedures involved in this matter were conducted in accordance with law. See, Title 69, Chapter 12, MCA, particularly Sections 69-12-321 through 69-12-323, MCA; Title 2, Chapter 4, MCA (MAPA), particularly Sections 2-4-601 through 2-4-631, MCA (contested cases).

18. Applications for motor carrier authority will be granted if the following circumstances exist: (a) there is a public need for the service proposed; (b) existing transportation services cannot or will not meet that need; (c) there will be no harm to existing transportation services contrary to the public interest; and (d) the applicant is fit to conduct the proposed services. See, generally, Section 69-12-323, MCA; State ex rel. H.R. Roberts v. Public Service Commission, ____ Mont. ____, ____, 47 St. Rptr. 774, 780, 790 P.2d 489, 494 (1990); In the Matter of Big Z, PSC Docket No. T-9511, Order No. 6019a, paras. 80-83 (1991).

19. Public need having not been established for the statewide authority as applied for by MRI, a grant of statewide motor

carrier authority cannot be maintained. To the extent of state-wide authority the other factors bearing on whether an authority should be granted need not be addressed.

20. Public need having been established for the account of Flathead Industries between its facilities at Kalispell, Whitefish, and Columbia Falls, Montana, from those facilities to Missoula, Montana, all other criteria for a grant to that extent having been met, a limited grant of authority can be maintained for that part of MRI's proposed services.

ORDER

1. All Conclusions of Law which can properly be deemed an Order and should be so deemed to preserve the integrity of this Order are incorporated herein as an Order.

2. The Application for Intrastate Certificate of Public Convenience and Necessity filed by Montana Recycling, Inc., is GRANTED to the extent of the account of Flathead Industries, Inc., as detailed below, and DISMISSED in all other regards.

3. Montana Recycling, Inc., shall have motor carrier authority (upon issuance of certificate and compliance with the laws governing motor carrier operations), Class C, recyclable

materials, limited to the account of Flathead Industries, Inc., for transportation between Flathead Industries' facilities at Kalispell, Whitefish, and Columbia Falls, Montana, and from those facilities to Missoula, Montana, transportation of commodities in bulk in tank vehicles is prohibited.

Done and dated this 5th day of February, 1993 (hearing), by a vote of 2 - 1 on the issue of dismissal, and this 24th day of February, 1993 (work session), by a vote of 3 - 0 on the issue of authority for the account of Flathead Industries, Inc.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ANDERSON, Chairman

BOB ROWE, Vice Chairman
(Voting to Dissent on Dismissal)

NANCY MCCAFFREE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.